

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
Honolulu, Hawaii

REF:OCCL:DH

FILE NO: CDUA KA-3373

Acceptance Date: August 31, 2006  
180-Day Exp. Date: February 27, 2007

January 26, 2007

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** After-The-Fact (ATF) Conservation District Use Application (CDUA) KA-3373 for Irons Single Family Residence (SFR)

**APPLICANT:** Roy Vitousek, Cades Schutte, 75-170 Hualalai Road, Suite 303, Kailua Kona, Hawaii 96740

**LANDOWNER:** Jason, Kaulana Irons and Constance Irons, c/o Kuhio Highway LLC, 4220 North Charles Street, Baltimore, Maryland, 21218

**LOCATION:** Haena, Island of Kauai

**TMK:** (4) 5-9-002:040

**AREA OF PARCEL/  
USE:** 9,812 square feet  
Same

**SUBZONE:** Limited

**HISTORY OF SUBJECT PARCEL:**

**Conservation District Use Application KA-352:**

On July 7, 1972, CDUA KA-352 was submitted by landowners James and Myra Gloss for their tenants Robert and Jorji Stay, for a 750 square foot Single Family Residence on the 9,812 square foot parcel. On September 25, 1972, the BLNR approved a Single Family Residence, subject to eight conditions (**Exhibit 1**).

**Conservation District Use Application KA-1176:**

ITEM K-2

On August 3, 1979, CDUA KA-1176 was submitted by landowners Gary and Corrine Eno, for a 288 square foot guesthouse on the 9,812 square foot parcel. On December 19, 1979, the Department sent a letter to the Eno's to inform them that the BLNR, at "its meeting of December 14, 1979, under Agenda H-7, denied the application on the basis that the proposed use is in conflict with the objective of the Limited subzone."

#### **Enforcement Case KA-03-19:**

On February 11, 2005, the Board of Land and Natural Resources (BLNR) found Jason, Kaulana, and Constance Irons in violation of Title 13-5 Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS) in two (2) instances by failing to obtain the appropriate approvals for unauthorized construction of a second Single Family Residence (SFR), and unpermitted improvements to the main SFR. The Irons were fined a total of \$5,000.00 and were subject to twelve terms and conditions (**Exhibit 2**).

The Irons were instructed by the BLNR to remove the kitchen from the second dwelling immediately. They were given two years to bring the subject parcel into conformance with Chapter 13-5, HAR, otherwise the main SFR would have to be returned to its original size and configuration, and the second SFR would be removed from the subject parcel. The Irons were successful in bringing the subject parcel into conformance with Chapter 13-5, HAR. However, they were unable to meet the deadline of August 11, 2005 to submit a CDUA for the after-the-fact improvements thus a time extension request was submitted to extend the processing period an additional 180-days; the request was granted by the BLNR on July 8, 2005 to file a CDUA by February 11, 2006. ATF CDUA KA-3295 was submitted and was rejected for processing on March 10, 2006. On August 31, 2006, ATF CDUA KA-3373 was accepted for processing.

#### **DESCRIPTION OF AREA/CURRENT USE:**

The proposed project is located on the 9,812 square foot subject parcel TMK: (4) 5-9-002:040, located in Haena, Island of Kauai. Access to the subject parcel is provided by a private roadway corridor (identified as Road C), which provides direct access to Kuhio Highway. The subject parcel is bounded on the west, north, east and south by private landowners. The subject parcel is located in the State Land Use (SLU) Conservation District, Limited subzone (**Exhibit 3**).

#### **PROPOSED PROJECT:**

The Irons propose to consolidate two existing SFR's into one SFR in Haena, Kauai, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

The consolidated SFR will be elevated and consist of 3,493 square feet; 307 square foot lanai, four bedrooms, three bathrooms, study, laundry room, family room, living room. Beneath the elevated structure is the proposed entry way and gym. The SFR meets the required minimum setback of fifteen feet from all sides of the subject parcel (**Exhibit 4**).

According to the applicant, the SFR is located in the State Land Use Conservation District, Limited subzone, and in a Coastal High Hazard Flood Area. On Flood Insurance Rate Map (FIRM) Panel 15000-20035-E (dated September 16, 2005), the subject parcel is located within Flood Zone AE 23.

The existing grade of the subject parcel is approximately 16.8 to 18.6 feet above MSL, thus the finished floor height of the building must be a minimum of 9.12 feet, above existing grade to comply with flood standards. This would allow the applicant to construct the enclosed living areas, and overlying roof structure of the SFR within a fifteen (15) foot building height envelope above the minimum MSL floor elevation as required by flood elevations. The SFR's maximum height is 22.1 feet.

Existing vegetation consists of grass, and landscaped plants, such as ti plants, ferns, hibiscus, coconut palms, rose bushes. The applicant notes there are no threatened or endangered native plants and/or animals present on the subject parcel. The applicant notes an Archaeological Report was conducted and noted there may be portions of buried Pre-contact midden deposit and/or unidentified traditional Hawaiian burials located within the property boundary. Utilities, such as, electrical, water, and telephone are available to the subject property. The applicant proposes to remove the existing cesspool and install a new wastewater system septic tank and leach field adjacent to the SFR.

#### **AGENCY COMMENTS:**

The CDUA was referred for review and comment to the DLNR – Division of Forestry and Wildlife (DOFAW), Historic Preservation Division (HPD), Kauai District Land Office (KDLO), Division of Conservation and Resources Enforcement (DOCARE), Kauai County Planning Department, Office of Hawaiian Affairs (OHA), Department of Health (DOH), Office of Environmental Quality Control (OEQC), and Princeville Public Library. The following comments were received:

##### Kauai District Land Office

No Comment.

##### Division of Forestry and Wildlife

No Comment.

##### Historic Preservation Division

The archeology report notes Site 50-30-02-1809 – a cultural deposit with human burials, is in the project area. The following should be attached to the permit: 1) archeological monitoring shall take place during all subsurface construction work due to the high probability of finding human burials; 2) an archeological monitoring plan shall be submitted in accordance with HAR 13-279 for review and approval by HPD; 3) a burial treatment plan shall be prepared and approved for burial discoveries encountered during the project. In addition consultation with the appropriate ethnic groups, the procedures outlined in Chapter 6E-43 shall be followed. The treatment plan should be prepared after consultation with Native Hawaiians, such as the Kauai Island Burial Council and OHA.

*Applicant Response: The applicant plans to have an archaeologist on site to monitor any ground-disturbing activity, and will stop work and contact the HPD if any cultural or human remains are discovered. An archeological monitoring plan is being prepared and will be submitted to HPD. If burials are encountered during any work, the applicants will prepare a burial treatment plan in consultation with the Kauai Island Burial Council and OHA.*

#### Engineering Division

According to the Flood Insurance Rate Map (FIRM) the project site is located in Zone AE; the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal regulations whenever developments within a Special Flood Hazard Area is undertaken. For questions about local flood ordinances please contact the County of Kauai, Department of Public Works, NFIP coordinator.

*Applicant Response: The Irons understand their home is located in Flood Zone AE with base flood elevation of 23 feet above MLS. They have worked with the architect to be sure the finished floor elevation will be 27.42 feet above MLS. The Irons have lived in Haena for over 15 years and understand the inherent natural hazards of living in a flood zone. Design plans have been submitted to Kauai County Planning Department for review and comment; the applicant will adhere to national and county flood standards in the construction of the improvements.*

#### Office of Hawaiian Affairs

OHA does not object to a finding of no significant impact for the proposed project, nor to the issuance of the CDUA. OHA appreciates the applicant prepared an archeology report, and understands the legal duty to cease work and contact the HPD should any cultural remains be discovered. We request the septic system be constructed on previously disturbed areas of the property, such as the site of the former cesspool.

*Applicant Response: The applicant plan to have an archaeologist on site to monitor any ground-disturbing activity, and will stop work and contact the HPD if any cultural or human remains are discovered. The former cesspool will be covered with the consolidation of the two SFR's. The new septic system will be sited at the former garage; which is a previously disturbed area.*

#### Office of Environmental Quality Control

OEQC notes the applicant should consult: 1) with the adjacent landowners; 2) with the DOH concerning the new septic system; 3) provide a list of all required permits; 4) print on both sides of the page to reduce bulk and save paper.

*Applicant Response: The neighbors have no objections. The DOH has responded with comments; they will be addressed. The applicants will comply with all applicable DOH wastewater standards. The FEA will list permits, approvals, and exemptions required. The FEA will be double-sided to save paper.*

#### Department of Health

The subject parcel is located in the Critical Wastewater Disposal Area (CWDA); an area where no new cesspools will be allowed. Information shows Building Permit Application No. 02-2291 was revoked in September 9, 2002. DOH does not object to the CDUA as it is proposed to install

a new individual wastewater system (IWS) to serve a SFR. However, the concern is the issuance of an after-the-fact permit will result in non-compliance with DOH wastewater rules. The following items must be complied with before the existing structures are in compliance with the wastewater rules: 1) the current wastewater disposal (cesspool) must be abandoned and IWS meeting standards shall be installed; 2) the IWS can serve only 5 bedrooms or bedroom-like rooms; 3) only one IWS will be allowed on the property; and 4) plans for the IWS shall be submitted to the Wastewater Branch for review and approval before construction begins, and approved in writing before being placed in service.

*Applicant Response: The applicant plans to pump and abandon the existing cesspool on the property. The proposed consolidated SFR will contain 4 bedrooms. Installation of one IWS is proposed; it was designed by an engineering firm and will comply with applicable provisions of DOH rules.*

#### Hanalei-Haena Community Association

Restrictions against short-term, transient vacation rentals in the Conservation District should be explicitly stated as a condition of any permit approvals and should be aggressively enforced by the DLNR. Should CDUA approval be given a deed restriction runs with the property that no short term, transient rentals will be allowed on the property. Penalties for violation of the requirement, including revocation of the CDUA permit and removal of the structures allowed under such a permit should be included in the terms and conditions. We recommend lot coverage in the Conservation District be restricted to 10% (subject to a minimum square footage of allowable lot coverage) consistent with County zoning and the Conservation District's primary purpose of natural resource protection.

We strongly disapprove of after-the-fact permits except in the most-exceptional of circumstances, as such permits encourage the construction of illegal structures in the knowledge that there will be minimal negative land use or monetary consequences for failing to follow the law.

We are concerned that structures elevated to meet flood ordinance requirements are very frequently enclosed to create one or more (illegal) dwellings unit(s) below the permitted, elevated structure. Absent strong sanctions, property owners have little economic incentive to comply with the requirements imposed by the flood ordinance. We ask if the CDUA is approved that: 1) restrictions against enclosures and use of the area be clearly stated as conditions of the permit; 2) there are strong penalties for violations of the condition, including revocation of the permit and removal of the structures.

*Applicant Response: The Irons family has no plans to use the property as a short-term vacation rental. It is home for three generations of Irons family. They have every intention of complying with applicable covenants and restrictions in their Haena neighborhood. The Irons occupy a lot less than ten thousand square feet. There are several smaller lots in Haena that were created in -1960's and have been expressly grandfathered in the Conservation District pursuant to a 2005 amendment of applicable Conservation District rules. It is infeasible for three adults and three children to share a SFR that occupies only ten percent of their property. The Irons are now seeking to satisfy DLNR regulations at significant expense by consolidating the two structures*

*into one structure to comply with Conservation District rules. The applicant's residence will be elevated in compliance with national and local flood standards. The Irons will comply with all conditions of the permit as well as local and national flood insurance standards.*

#### **ANALYSIS:**

*The OCCL notes an exception is made for the submittal and processing of CDUA KA-3373 from the Single Family Residential Standards for the required Minimum Lot Size of 10,000 square feet, pursuant to criteria number 3, "lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et. al. v. Heirs of Ahi. et. al., Civil No. 30, Fifth Circuit Court, State of Hawaii. The amendment to Chapter 13-5, HAR, took place effective November 14, 2005 (Exhibit 5).*

Following review and acceptance for processing, the applicant was notified, by letter dated August.31, 2006 that:

1. The proposed use is an identified land use (L-6, SINGLE FAMILY RESIDENCES, D-1) within the Limited Subzone of the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR); please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the September 23, 2006 issue of the Environmental Notice.

Staff notes the FONSI was published in the OEQC's Environmental Notice on December 23, 2006.

#### **13-5-30 CRITERIA:**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on an already developed parcel, however the action is consistent with the purpose of the Conservation District. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities.

Staff notes the proposed SFR is an identified land use within the Limited subzone; which is restrictive regarding land use development. However, staff notes that the proposed project has met the restrictive criteria and that adequate mitigation measures have been taken to the protected natural resources of the coastal area.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Documentation dated January 18, 2007 received from the County of Kauai states one single-family residence is considered exempt from the Special Management Area Rules. Staff believes the land use complies with the provisions and guidelines contained in Chapter 205A, HRS.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. The site is currently has two existing SFR, which will be consolidated into one SFR structure. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed consolidation of the two SFR's into one SFR structure that meets FIRM standards and Conservation District rules and regulations will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

## **DISCUSSION:**

Staff reiterates that the Board of Land Natural Resources' 1981 policy amendment allows single-family residential use in the partitioned area located in the Limited subzone known as the "Haena Hui Subdivision." Haena Hui is different than other areas within the Conservation District due to its unique history.

In 1967, the Kauai Courts approved the Haena Hui Subdivision. This was done without the consent of the BLNR. The BLNR considered this issue in 1980 and determined that the individuals involved acted in good faith by applying to and following the dictates of the courts in the matter, albeit the oversight of the BLNR's requirements to first obtain a permit for subdivision. Following this chain of events, the BLNR adopted a policy that residential lots within Haena Hui subdivision (save for certain lots with poor developmental qualities, such as some beach lots), would qualify for one residential structure, subject to some special and standard conditions, which are herein incorporated.

Notwithstanding this policy, and notwithstanding a change in the policy by the BLNR, the BLNR still retains its discretionary authority over all matters with respect to land use within the Conservation District.

The approval of CDUA KA-3373 by the BLNR will be the final step in resolving Enforcement Case KA-03-19 terms and conditions. Staff notes the consolidation of the two existing SFR's will: relocate the unauthorized SFR constructed in 2002, remove the unauthorized living area and storage area below the main SFR, and "cure" the main SFR's unauthorized improvements (porch, decks, living area extension) of what was originally permitted in CDUA KA-352. The consolidated SFR will also conform to HAR, Section 13-5-23, identified land uses in the Limited subzone, L-6, SINGLE FAMILY RESIDENCE,<sup>1</sup> and HAR, Section 13-5-41(b), SINGLE FAMILY RESIDENCES: STANDARDS.<sup>2</sup>

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<sup>1</sup> Staff notes HAR, Section 13-5-23, identified land uses in the Limited subzone, L-6, SINGLE FAMILY RESIDENCE notes, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

<sup>2</sup> Staff notes HAR, Section 13-5-41(b), SINGLE FAMILY RESIDENCES: STANDARDS notes, "not more than one single family residence shall be authorized within the Conservation District on a legal lot of record."



Staff notes Enforcement Case KA-03-19 will finally be resolved through the BLNR's approval of ATF CDUA KA-3373. Staff notes the applicant met the required Conservation District criteria to process the CDUA to consolidate the two SFR's into one SFR structure. However, staff reminds the applicant that there are applicable rules and regulations that are in place to conserve, protect and preserve the important natural resources of the State's Conservation District, and the public's health, safety, and welfare.

The Irons propose to consolidate the two existing SFR's into one SFR in Haena, Kauai, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES.

The consolidated SFR will be elevated and consist of 3,493 square feet; 307 square foot lanai, four bedrooms, three bathrooms, study, laundry room, family room, living room. Beneath the elevated structure is the proposed entry way and gym. Staff notes the proposed SFR is still less than the 3,500 square foot SFR that would normally be allowed under HAR, Section 13-5-23.

The applicant should preserve the natural beauty and open space characteristics of the subject parcel around the consolidated SFR with appropriate building design and landscaping, thus staff is of the opinion that the consolidated SFR will not result in substantial adverse impacts to natural resources. However, staff notes should further work (i.e. landscaping) occur that the applicant receive our approval, prior to construction. Staff notes the proposed project meets the Minimum Setback requirements of fifteen (15) feet on all sides.

Staff notes the applicant is not requesting a variance, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS,<sup>3</sup> even though the SFR is located within Flood Zone AE 23. The SFR's maximum height is 22.1 feet.

Staff comments there is significant potential for fugitive dust to be generated during the proposed action, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including but not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

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<sup>3</sup> HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building."

Lastly, staff recommends to the BLNR to assign a condition that no living area and/or habitation will be allowed underneath the Main House. Staff also recommends to the BLNR that due to the transient nature of the Haena community that a condition be assigned that the SFR shall not be used for rental or any other commercial purposes, unless approved by the BLNR.

Therefore, staff recommends the following:

**RECOMMENDATION:**

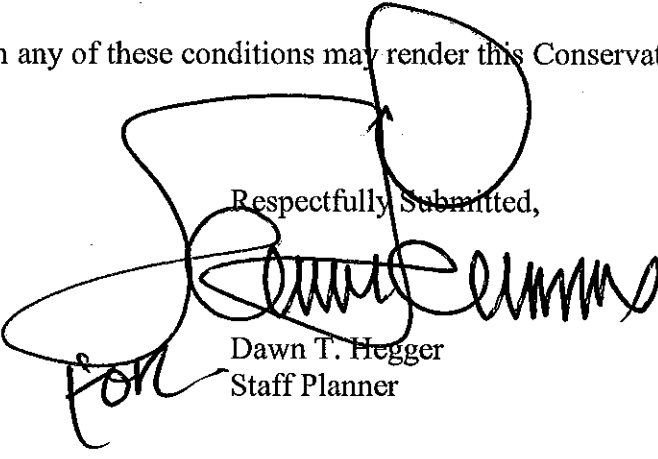
That the Board of Land and Natural Resources APPROVE CDUA KA-3373 for the proposed consolidation of the Irons two existing Single Family Residence's into one Single Family Residence, located in Haena District, Island of Kauai, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant will use Best Management Practices for the proposed project;
9. The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;
10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
12. The applicant shall abide by the Historic Preservations conditions:
  - a. Archeological monitoring shall take place during all subsurface construction work due to the high probability of finding human burials;
  - b. An archeological monitoring plan shall be submitted in accordance with HAR 13-279 for review and approval by the HPD office; and
  - c. A burial treatment plan shall be prepared and approved for burial discoveries encountered during the project;
13. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. The Single Family Dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
15. That the applicant shall execute a waiver and indemnity prior to construction plan approval that is satisfactory to the Department;
16. Other terms and conditions as may be prescribed by the Chairperson; and

17. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,

  
Dawn T. Hegger  
Staff Planner

By: 

PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

LA-7/7/72-352

September 25, 1972

Mr. Robert F. Stay  
P. O. Box 32  
Hanalei, Kauai 96714

Dear Mr. Stay:

Conservation District Use Application for  
Residential Use at Maena, Kauai

The Board of Land and Natural Resources, at its meeting of September 22, 1972, approved your requested use, subject to the following conditions:

1. The applicant shall submit a minimum of three copies of plans for earthwork, construction, and landscaping to the Chairman for review and approval prior to the start of work activity.
2. The applicant shall notify the Department upon the commencement and at the completion of all work.
3. All clearing work shall be subject to the approval of the Department.
4. All debris and rubbish from the work activity shall be removed to approved sanitary disposal sites.
5. All structures shall be painted to blend with the environment.
6. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments.
7. Time Limit of Permit. Upon approval of this application, the applicant will have a period not to exceed one year from the date of approval in which to start the project.

EXHIBIT 1

Mr. Robert F. Stay

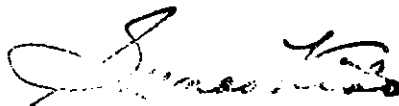
-2-

September 25, 1972

8. The applicant, its successors and assigns shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit and also any loss, liability, claim or demand for property damage, personal injury and death arising out of or relating to or connected with the granting of this permit.

Very truly yours,

BOARD OF LAND AND NATURAL RESOURCES



SUNAO KIDO  
Chairman and Member

cc: Mr. James Gloss  
County Planning Dept.  
County Water Dept.  
Dept. of Health  
Land Use Commission  
OEQC  
Kauai Land Agent  
Kauai Bd. Member

bcc: Divisions

ts

EXHIBIT 1

TRUE NORTH  
SCALE: 1" = 20'

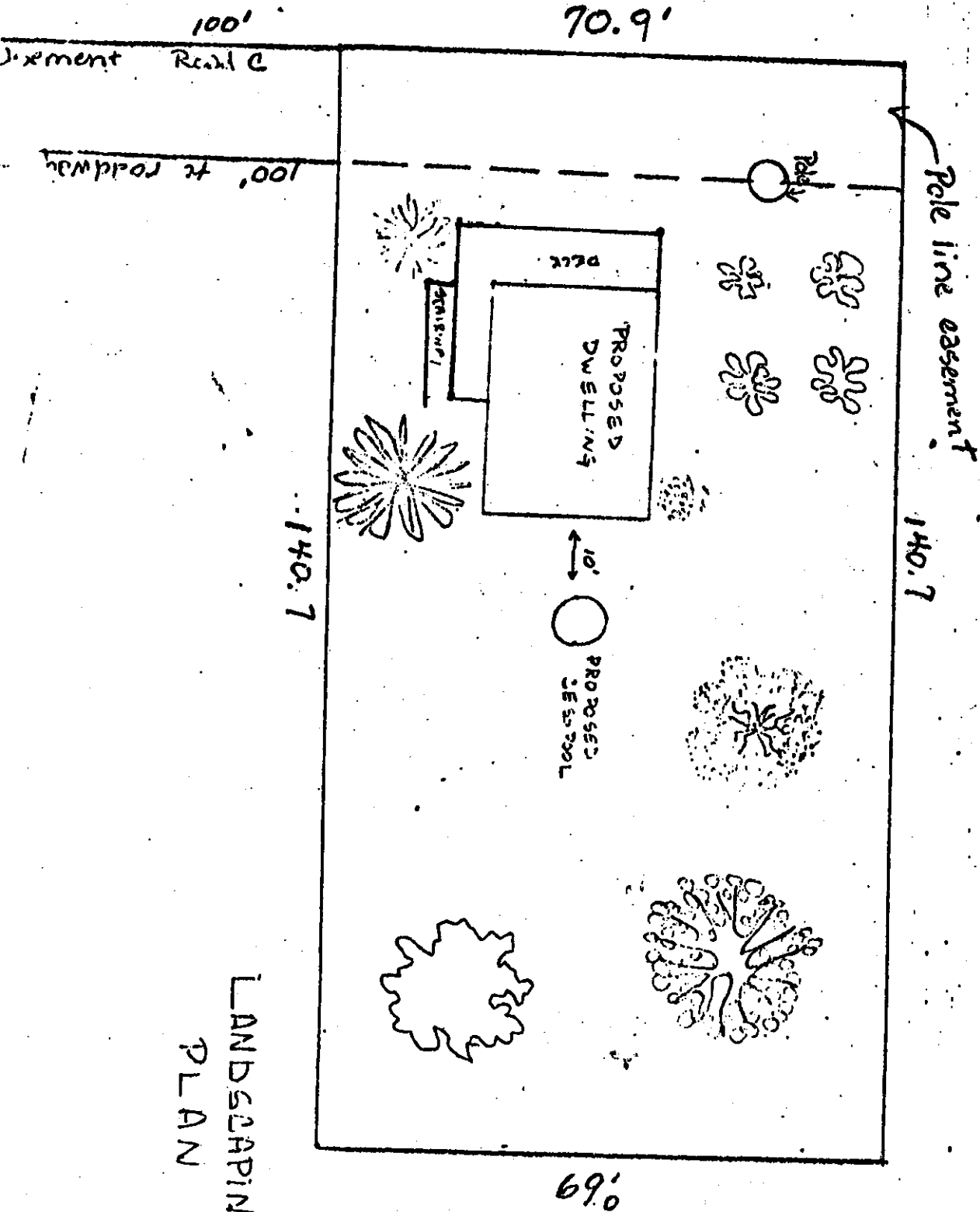
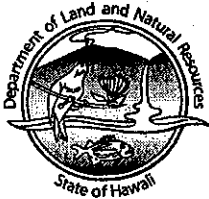


EXHIBIT I



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref:OCCL:DH

ENF: KA-03-19

**CERTIFIED/RETURN RECEIPT**

7004 0750 0001 8229 2449

FEB 11 2005

Jason and Kaulana Irons  
Constance Irons  
C/O Roy Vitousek  
Cades Schutte  
75-170 Hualalai Road, Suite 303  
Kailua Kona, Hawaii 96740

Dear Mr. Vitousek,

SUBJECT: Enforcement Violation KA-03-19

This is to inform you that on Friday, February 11, 2005, the Board of Land and Natural Resources (Board) found Jason and Kaulana Irons and Constance Irons to be in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes (HRS), on subject parcel TMK: (4) 5-9-002:040, Haena, Island of Kauai, and is subject to the following:

1. That the Irons are in violation of the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in two (2) instances by failing to obtain the appropriate approvals for the: 1) unauthorized construction of the second SFR; and 2) unpermitted improvements to the main SFR;
2. That the Irons are fined a total of \$4,000.00 for the these Conservation District violations;
3. That the Irons are fined a total of \$1,000 for administrative costs;
4. That the Irons shall pay all fines (total \$5,000.00) within thirty (30) days of the date of the Board's action;
5. That the second SFR be removed from the subject parcel within two years of the date of the Board's action, unless otherwise provided by the Board;

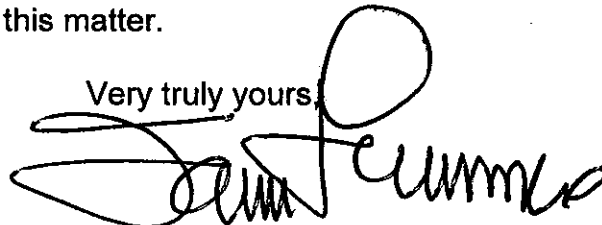
**EXHIBIT 2**



6. That after two years, if the Irons are unsuccessful in bringing the subject parcel into conformance with Chapter 13-5, HAR, the main SFR shall be returned to its original size and configuration;
7. That a DOCARE Officer will inspect the premises eight (8) months after the date of the BLNR's action;
8. That no further work shall occur on the subject parcel within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District without the appropriate approvals; the alleged will be fined an additional \$2,000 a day;
9. That in the event of failure of the alleged to comply with any order herein, the alleged shall be fined an additional \$2,000 per day until the order is complied with; and
10. That the landowner shall submit a Conservation District Use Application for the after-the-fact improvements within six (6) months of the Board's action on the matter;
11. That the landowner shall remove the kitchen from the second dwelling immediately; and
12. That in the event of failure of the alleged or the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Please call Dawn Hegger of the Office of Conservation and Coastal Lands at 587-0380, should you have any questions on this matter.

Very truly yours,



Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

CC: Kauai Office Land Division  
Kauai DOCARE Office  
County of Kauai  
Les Milnes - Planning Department  
Patricia Ferrara - Real Property Assessment Division  
Jason and Kaulana Irons  
Constance Irons

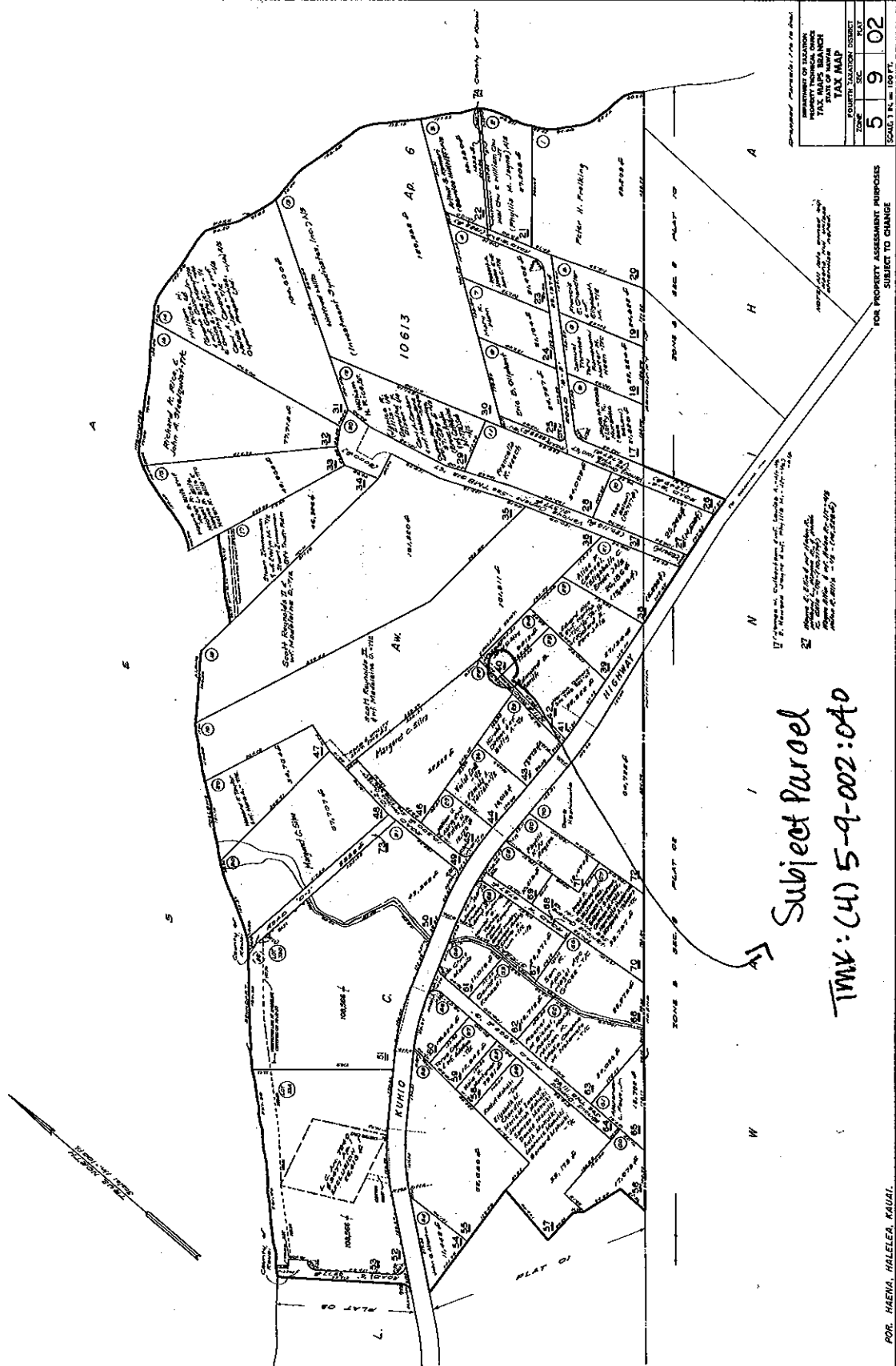
**Kauai**

Map of Kauai showing the location of the subject parcel. The map includes labels for various locations such as Hanalei, Niihau, Waimea, and Kapa. A thick black line with an arrow points from the subject parcel location (marked with a circle) to the text "Subject Parcel TMK 24-5-9-002: 040".

**LEGEND**

- CONSERVATION DISTRICT
- JWP ROAD
- ROAD, HIGHWAYS
- TRAIL

**EXHIBIT 3**



POR. HAENA, HALELEA, KAUAI.

R 33

**SEE INSET**

**EXHIBIT 2**

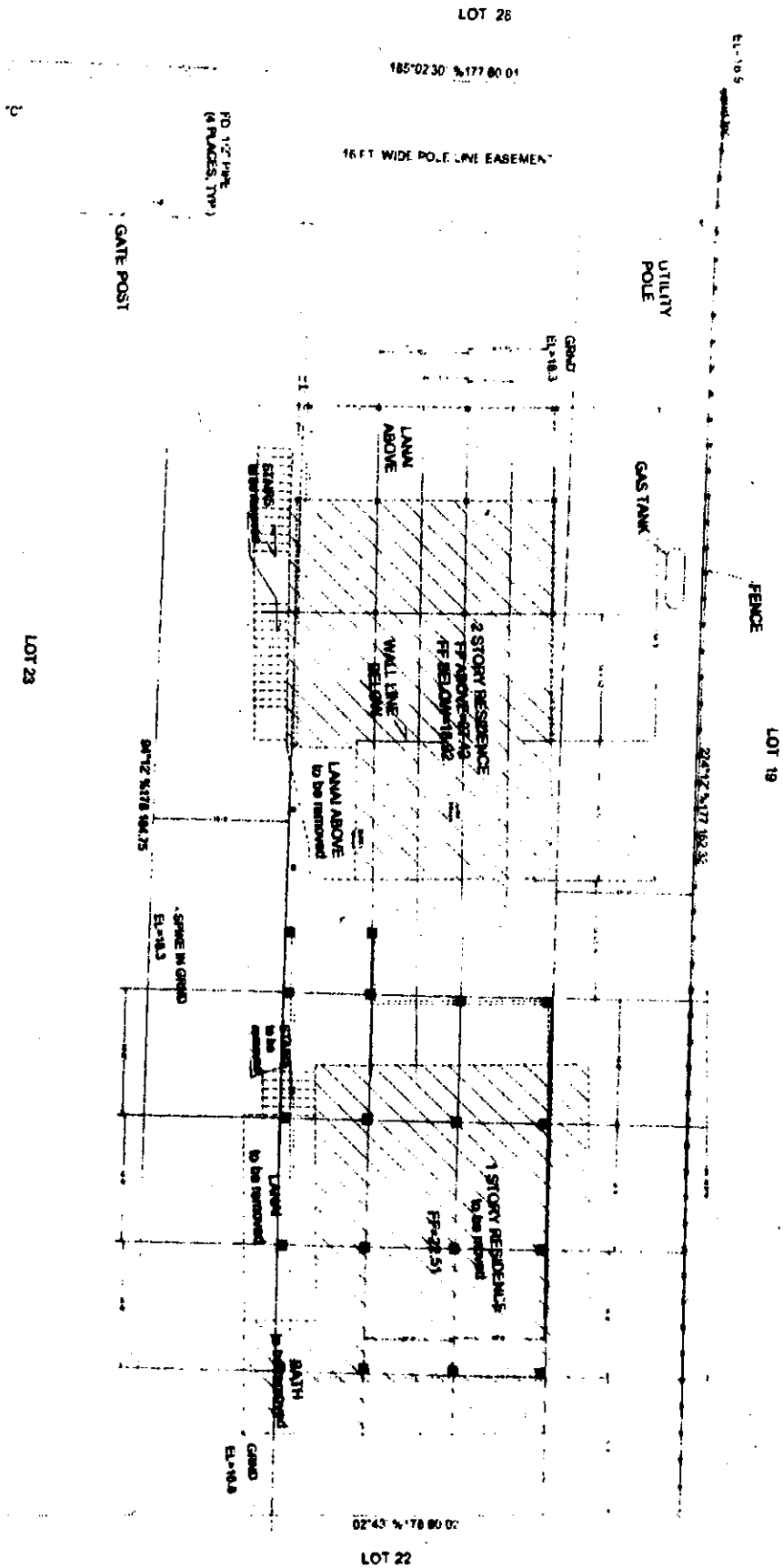
MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120; HANAIEI, HAWAII 96714  
808 826-4699; FAX 808 826-9697

IRONS RESIDENCE  
TMK [4] 5-9-002:040

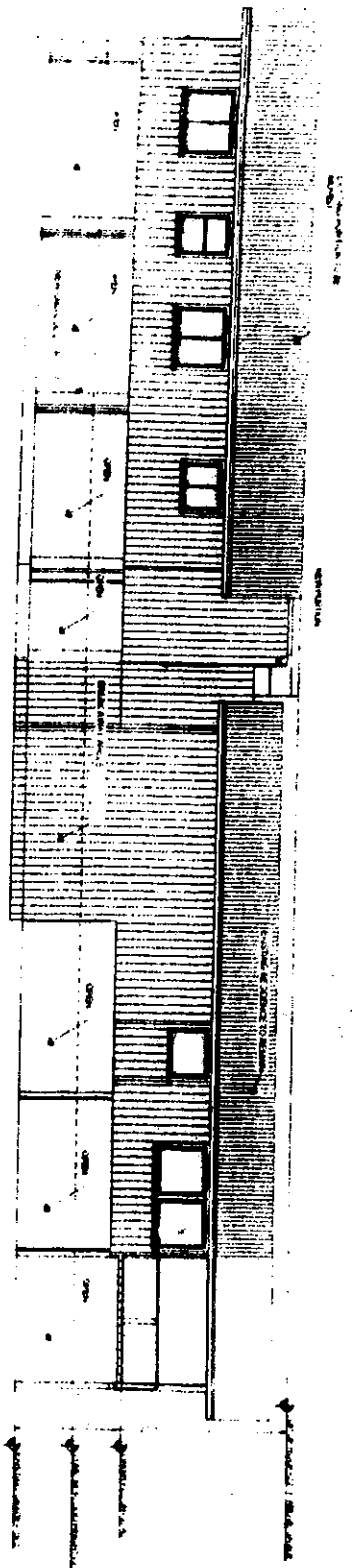
# EXHIBIT 4

SCALE 1"=20'-0"

## EXISTING SITE PLAN





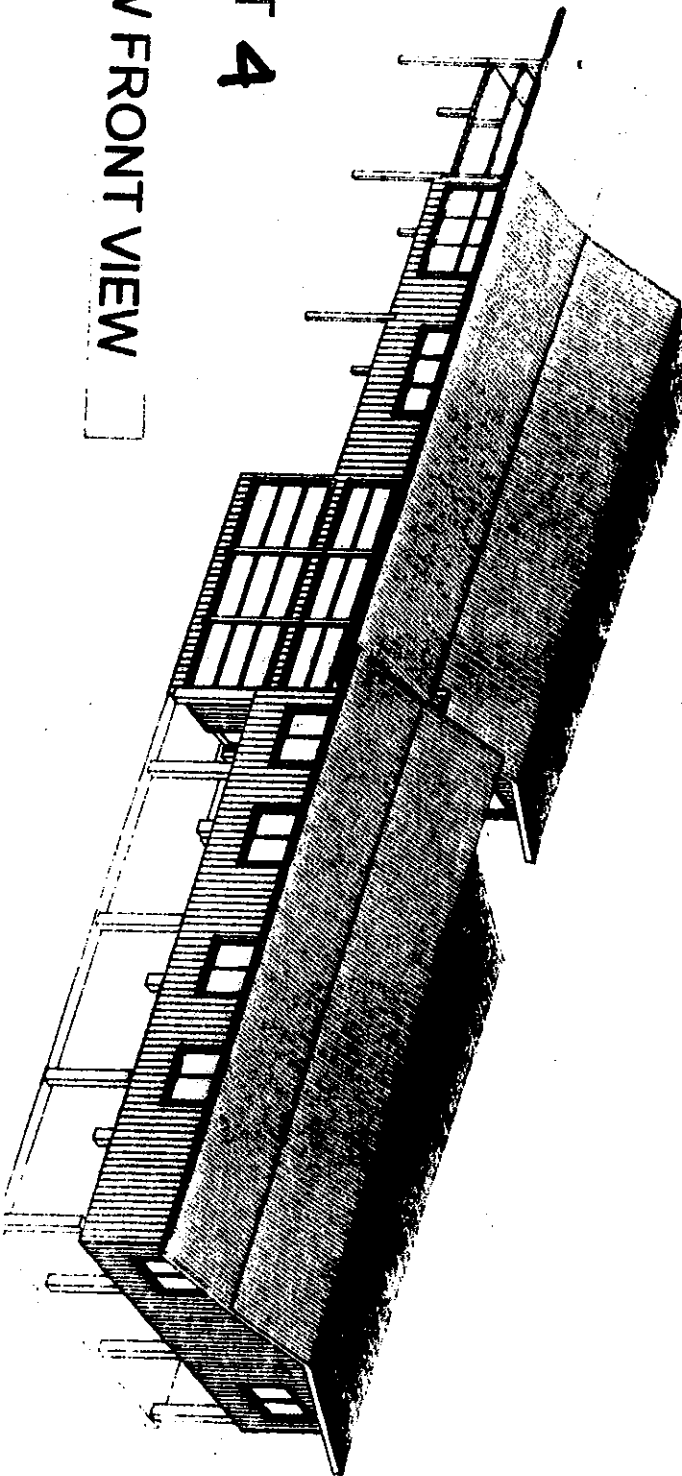


NEW REAR ELEVATION

SCALE 1/16"=1'-0"

EXHIBIT 4

NEW FRONT VIEW



MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120, HANALEI, HAWAII 96714  
808 826-4699, FAX 808 826-9697

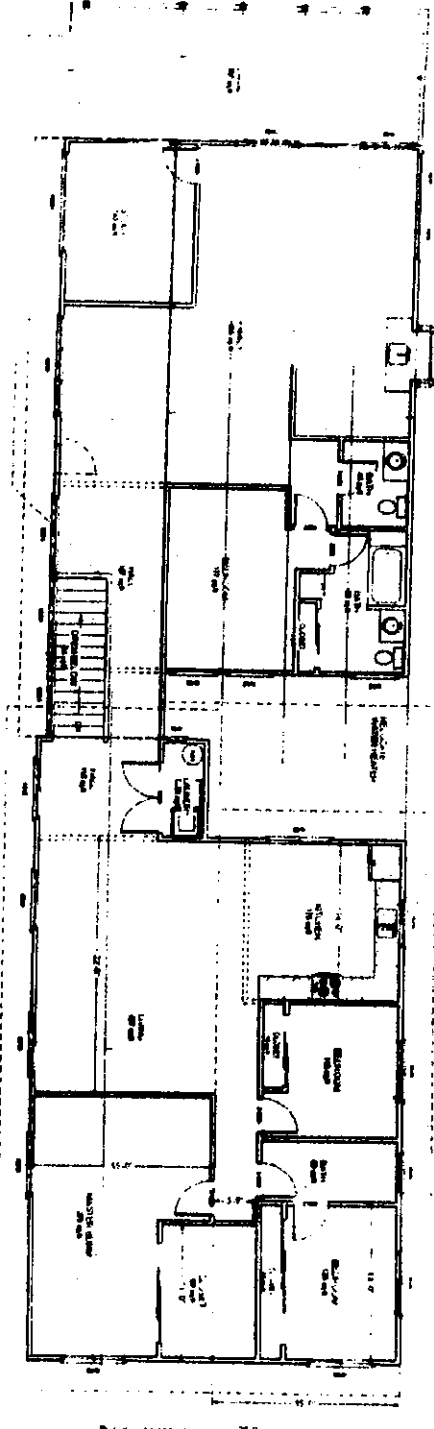
IRONS RESIDENCE  
TMK [4] 5-9-002:040

**MATTHEW SCHALLER, ARCHITECT INC.**  
P.O. BOX 120, HANAIEI, HAWAII 96714  
808 826-4699; FAX 808 826-9697

**EXHIBIT 4**

**SCALE 1/16"=1'-0"**

## NEW FLOOR PLAN



**ADTEA RECUP**

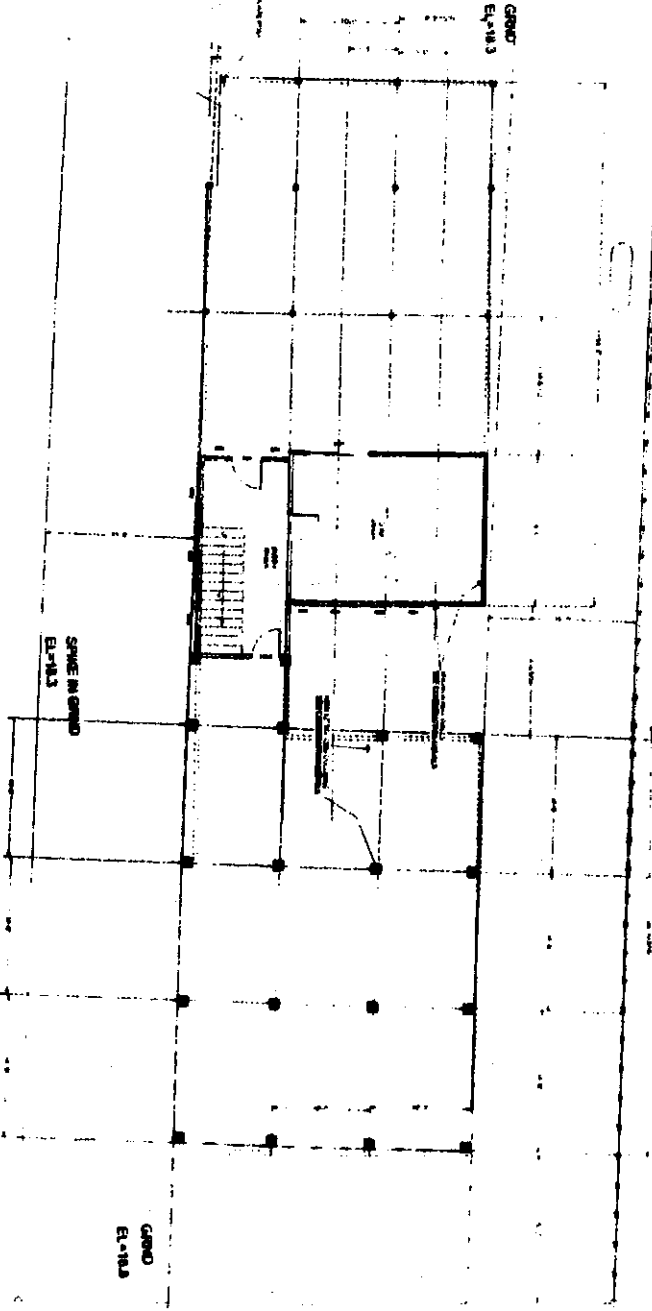
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**IRONS RESIDENCE  
TMK [4] 5-9-002:040**



EL+18.5

T.M.K. 5-09-002.40  
LOT 24: 9812 sq. ft.



# EXHIBIT 4

## NEW SITE PLAN

SCALE 1"=20'-0"

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IRONS RESIDENCE  
TMK [4] 5-9-002:040



MAIN SFR APPROVED UNDER KA-352



BACKSIDE OF MAIN SFR /ENCLOSED AREAS



ENCLOSED AREAS UPSTAIRS AND DOWNSTAIRS



UNPERMITTED SECOND SFR

Exhibit 4  
Single Family Residential Standards: September 9, 2005

Minimum Lot Size: 10,000 square feet

Exceptions:

- \* <
- 1) kuleana
  - 2) nonconforming use
  - 3) lots designated as "Good Interior House Lots" or "Good House Lots on Road" on Exhibit "C" of the Final Order in partition entered October 20, 1967, in Allerton, et al. v. Heirs of Ahi, et al., Civil No. 30, Fifth Circuit Court, State of Hawaii.

Minimum Setback: For lots 10,000 square feet to one acre:

Front: 15 feet  
Sides: 15 feet  
Back: 15 feet

For lots over one acre:

Front: 25 feet  
Sides: 25 feet  
Back: 25 feet

Exceptions: Site characteristics and lot shape may be a factor in adjusting minimum setbacks when so determined by the board.

Maximum Developable Area:

Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all enclosed (on three sides minimum, with floor or roof structure above) living areas; above grade decks in excess on 4'-0" in width; garage or carport; swimming pools, saunas or other developed water features (excluding naturally